

Calendar No. 523

108TH CONGRESS
2D SESSION**S. 1097****[Report No. 108–268]**

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2003

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

MAY 20, 2004

Reported by Mr. DOMENICI, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Calfed Bay-Delta Au-
5 thorization Act”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act.

3 (1) ~~CALFED BAY-DELTA PROGRAM.~~—The term
 4 “~~Calfed Bay-Delta Program~~” means the programs,
 5 projects, complementary actions, and activities un-
 6 dertaken through coordinated planning, implementa-
 7 tion, and assessment activities of the State and Fed-
 8 eral agencies in a manner consistent with the Record
 9 of Decision.

10 (2) ~~CALIFORNIA BAY-DELTA AUTHORITY.~~—The
 11 term “~~California Bay-Delta Authority~~” means a
 12 committee of State and Federal agencies and public
 13 members established to oversee the Calfed Bay-Delta
 14 Program, as set forth in the California Bay-Delta
 15 Authority Act (2002 Cal. Stat. Chap. 812).

16 (3) ~~ENVIRONMENTAL WATER ACCOUNT.~~—The
 17 term “~~Environmental Water Account~~” means the re-
 18 serve of water provided for in the Record of Decision
 19 to provide water, in addition to the amount of the
 20 regulatory baseline, to protect and restore Delta
 21 fisheries.

22 (4) ~~FEDERAL AGENCIES.~~—The term “~~Federal~~
 23 ~~agencies~~” means the following—

24 (A) the Department of the Interior (includ-
 25 ing the Bureau of Reclamation, Fish and Wild-

1 life Service, Bureau of Land Management, and
 2 United States Geological Survey),

3 ~~(B) the Environmental Protection Agency;~~

4 ~~(C) the Army Corps of Engineers;~~

5 ~~(D) the Department of Commerce (includ-~~
 6 ~~ing NOAA Fisheries);~~

7 ~~(E) the Department of Agriculture (includ-~~
 8 ~~ing the Natural Resources Conservation Service~~
 9 ~~and the Forest Service); and~~

10 ~~(F) the Western Area Power Administra-~~
 11 ~~tion.~~

12 ~~(5) GOVERNOR.—The term “Governor” means~~
 13 ~~the Governor of the State of California.~~

14 ~~(6) IMPLEMENTATION MEMORANDUM.—The~~
 15 ~~term “Implementation Memorandum” means the~~
 16 ~~Calfed Bay-Delta Program Implementation Memo-~~
 17 ~~randum of Understanding dated August 28, 2000,~~
 18 ~~executed by the Federal agencies and the State~~
 19 ~~agencies.~~

20 ~~(7) RECORD OF DECISION.—The term “Record~~
 21 ~~of Decision” means the Federal programmatic~~
 22 ~~Record of Decision dated August 28, 2000, issued~~
 23 ~~by the Federal agencies and supported by the State.~~

24 ~~(8) SECRETARY.—The term “Secretary” means~~
 25 ~~the Secretary of the Interior.~~

1 ~~(9) STAGE 1.~~—The term “Stage 1” means the
 2 programs and projects planned for the first 7 years
 3 of the ~~Calfed Bay-Delta Program~~, as specified in the
 4 Record of Decision.

5 ~~(10) STATE.~~—The term “State” means the
 6 State of California.

7 ~~(11) STATE AGENCIES.~~—The term “State
 8 Agencies” means the following—

9 ~~(A)~~ the Resources Agency of California
 10 (including the Department of Water Resources
 11 and the Department of Fish and Game);

12 ~~(B)~~ the California Environmental Protec-
 13 tion Agency (including the State Water Re-
 14 sources Control Board); and

15 ~~(C)~~ the California Department of Food
 16 and Agriculture.

17 **SEC. 3. BAY DELTA PROGRAM.**

18 ~~(a) FINDINGS.~~—Congress finds that—

19 ~~(1)~~ the mission of the ~~Calfed Bay-Delta Pro-~~
 20 gram is to develop and implement to a long-term
 21 comprehensive plan that will improve water manage-
 22 ment and restore the ecological health of the Bay-
 23 Delta system;

24 ~~(2)~~ the Federal and State agencies participating
 25 in the Bay-Delta Program have prepared a thirty-

1 year plan, the Record of Decision, dated August 28,
2 2000, to coordinate existing programs and direct
3 new programs to improve the quality and reliability
4 of the State's water supplies and to restore the eco-
5 logical health of the Bay-Delta watershed;

6 ~~(3) the Calfed Bay-Delta Program was devel-~~
7 ~~oped as a joint Federal-State program to deal effec-~~
8 ~~tively with the multijurisdictional issues involved in~~
9 ~~managing the Bay-Delta system; and~~

10 ~~(4) while this Act authorizes appropriations for~~
11 ~~four years of this thirty-year program, it is antici-~~
12 ~~pated that the Federal Government will participate~~
13 ~~as a full partner with the State of California for the~~
14 ~~duration of this thirty-year Program.~~

15 ~~(b) IN GENERAL.—The Record of Decision is ap-~~
16 ~~proved as a framework for addressing Calfed Bay-Delta~~
17 ~~Program components consisting of water storage, eco-~~
18 ~~system restoration, water supply reliability, conveyance,~~
19 ~~water use efficiency, water quality, water transfers, water-~~
20 ~~sheds, Environmental Water Account, levee stability, gov-~~
21 ~~ernance, and science. The Secretary and the heads of the~~
22 ~~Federal agencies are authorized to carry out (undertake,~~
23 ~~fund, or participate in) the activities in the Record of De-~~
24 ~~cision, subject to the provisions of this Act and the con-~~
25 ~~straints of the Record of Decision, so that the Program~~

1 activities consisting of protecting drinking water quality;
 2 restoring ecological health; improving water supply reli-
 3 ability, including additional water storage and conveyance;
 4 and protecting Delta levees will progress in a balanced
 5 manner.

6 ~~(c) AUTHORIZED ACTIVITIES.—~~

7 ~~(1) IN GENERAL.—~~The Secretary and the heads
 8 of the Federal agencies are authorized to carry out
 9 the activities described in this subsection in further-
 10 ance of Stage 1 of the Califed Bay-Delta Program as
 11 set forth in the Record of Decision, subject to the
 12 cost-share and other provisions of this Act, if the ac-
 13 tivity has been subject to environmental review and
 14 approval as required under applicable Federal and
 15 State law, and has been approved and certified by
 16 the California Bay-Delta Authority to be consistent
 17 with the Record of Decision.

18 ~~(2) SPECIFIC ACTIVITIES AUTHORIZED.—~~The
 19 Secretary of the Interior is authorized to carry out
 20 the activities set forth in subparagraphs (A) through
 21 (H), and subparagraphs (K), (L), and (M) of sub-
 22 section (c)(3). The Administrator of the Environ-
 23 mental Protection Agency is authorized to carry out
 24 the activities set forth in subparagraphs (G), (H),
 25 (I), (K), and (L) of subsection (c)(3). The Secretary

1 of the Army is authorized to carry out the activities
 2 set forth in subparagraphs (G), (J), (K), and (L) of
 3 subsection (e)(3). The Secretary of Commerce is au-
 4 thorized to carry out the activities set forth in sub-
 5 paragraphs (E), (G), (H), and (K) of subsection
 6 (e)(3). The Secretary of Agriculture is authorized to
 7 carry out the activities set forth in subparagraphs
 8 (C), (G), (H), (I), and (K) of subsection (e)(3).

9 ~~(3) PROGRAM ACTIVITIES.—~~

10 ~~(A) WATER STORAGE.—~~Of the amounts
 11 authorized to be appropriated for fiscal years
 12 2004 through 2007 under this Act, no more
 13 than \$102,000,000 may be expended for the
 14 following—

15 ~~(i) planning activities and feasibility~~
 16 ~~studies for the following projects to be pur-~~
 17 ~~sued with project-specific study—~~

18 ~~(I) enlargement of Shasta Dam~~
 19 ~~in Shasta County (not to exceed~~
 20 ~~12,000,000); and~~

21 ~~(II) enlargement of Los Vaqueros~~
 22 ~~Reservoir in Contra Costa County~~
 23 ~~(not to exceed \$17,000,000);~~

(ii) planning and feasibility studies for the following projects requiring further consideration—

(I) Sites Reservoir in Colusa County (not to exceed \$6,000,000); and

(II) Upper San Joaquin River storage in Fresno and Madera Counties (not to exceed \$11,000,000);

(iii) developing and implementing groundwater management and groundwater storage project (not to exceed \$50,000,000); and

(iv) comprehensive water management planning (not to exceed \$6,000,000).

(B) CONVEYANCE.—Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this Act, no more than \$77,000,000 may be expended for the following—

(i) South Delta Actions (not to exceed \$45,000,000)—

(I) South Delta Improvements Program to—

1 (aa) increase the State
2 Water Project export limit to
3 8,500 cfs;

4 (bb) install permanent, oper-
5 able barriers in the south Delta;

6 (cc) design and construct
7 fish screens and intake facilities
8 at Clifton Court Forebay and the
9 Tracy Pumping Plant facilities;
10 and

11 (dd) increase the State
12 Water Project export to the max-
13 imum capability of 10,300 cfs;

14 (HI) reduction of agricultural drainage
15 in south Delta channels and other actions
16 necessary to minimize impacts of such
17 drainage on drinking water quality;

18 (III) design and construction of
19 lower San Joaquin River floodway im-
20 provements;

21 (IV) installation and operation of
22 temporary barriers in the south Delta
23 until fully operable barriers are con-
24 structed;

1 (V) actions to protect navigation
2 and local diversions not adequately
3 protected by the temporary barriers;

4 (VI) actions identified in Sub-
5 clause (I) or other actions necessary
6 to offset degradation of drinking
7 water quality in the Delta due to the
8 South Delta Improvements Program;
9 and

10 (VII) actions at Franks Tract to
11 improve water quality in the Delta;

12 (ii) North Delta Actions (not to ex-
13 ceed \$12,000,000)—

14 (I) evaluation and implementa-
15 tion of improved operational proce-
16 dures for the Delta Cross Channel to
17 address fishery and water quality con-
18 cerns;

19 (II) evaluation of a screened
20 through-Delta facility on the Sac-
21 ramento River; and

22 (III) design and construction of
23 lower Mokelumne River floodway im-
24 provements;

1 (iii) interties (not to exceed
2 \$10,000,000)—

3 (I) evaluation and construction of
4 an intertie between the State Water
5 Project and the Central Valley Project
6 facilities at or near the City of Tracy;
7 and

8 (II) assessment of the connection
9 of the Central Valley Project to the
10 State Water Project's Clifton Court
11 Forebay with a corresponding increase
12 in the Forebay's screened intake; and

13 (iv) evaluation and implementation of
14 the San Luis Reservoir lowpoint improve-
15 ment project (not to exceed \$10,000,000);

16 (C) WATER USE EFFICIENCY.—Of the
17 amounts authorized to be appropriated for fis-
18 cal years 2004 through 2007 under this Act, no
19 more than \$153,000,000 may be expended for
20 the following—

21 (i) water conservation projects that
22 provide water supply reliability, water
23 quality, and ecosystem benefits to the Bay-
24 Delta system (not to exceed \$61,000,000);

1 (ii) technical assistance for urban and
2 agricultural water conservation projects
3 (not to exceed \$5,000,000);

4 (iii) water recycling and desalination
5 projects, including but not limited to
6 projects identified in the Bay Area Water
7 Plan and the Southern California Com-
8 prehensive Water Reclamation and Reuse
9 Study (not to exceed \$84,000,000), as fol-
10 lows—

11 (I) in providing financial assist-
12 ance under this clause, the Secretary
13 shall give priority consideration to
14 projects that include regional solu-
15 tions to benefit regional water supply
16 and reliability needs;

17 (II) the Secretary shall review
18 any feasibility level studies for sea-
19 water desalination and regional brine
20 line projects that have been com-
21 pleted, whether or not those studies
22 were prepared with financial assist-
23 ance from the Secretary;

24 (III) the Secretary shall report to
25 the Congress within 90 days after the

1 completion of a feasibility study or the
 2 review of a feasibility study for the
 3 purposes of providing design and con-
 4 struction assistance for the construc-
 5 tion of desalination and regional brine
 6 line projects; and

7 (IV) the Federal share of the
 8 cost of any activity carried out with
 9 assistance under this clause may not
 10 exceed the lesser of 25 percent of the
 11 total cost of the activity or
 12 \$50,000,000;

13 (iv) water measurement and transfer
 14 actions (not to exceed \$1,500,000); and

15 (v) certification of implementation of
 16 best management practices for urban
 17 water conservation (not to exceed
 18 \$1,500,000).

19 (D) WATER TRANSFERS.—Of the amounts
 20 authorized to be appropriated for fiscal years
 21 2004 through 2007 under this Act, no more
 22 than \$2,000,000 may be expended for the fol-
 23 lowing—

24 (i) increasing the availability of exist-
 25 ing facilities for water transfers;

(ii) lowering transaction costs through permit streamlining; and

(iii) maintaining a water transfer information clearinghouse.

(E) ENVIRONMENTAL WATER ACCOUNT.—

Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this act, no more than \$75,000,000 may be expended for implementation of the Environmental Water Account.

(F) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this Act, no more than \$95,000,000 may be expended for the following—

(i) establishing a competitive grants program to assist local and regional communities in California in developing and implementing integrated regional water management plans to carry out Stage 1 of the Record of Decision; and

(ii) implementation of projects and programs in California that improve water supply reliability, water quality, ecosystem

1 restoration, and flood protection, or meet
2 other local and regional needs, that are
3 consistent with, and make a significant
4 contribution to, Stage 1 of the Calfed Bay-
5 Delta Program.

6 ~~(G) ECOSYSTEM RESTORATION.~~—Of the
7 amounts authorized to be appropriated for fis-
8 cal years 2004 through 2007 under this Act, no
9 more than \$100,000,000 may be expended for
10 the following—

11 (i) implementation of large-scale res-
12 toration projects in San Francisco Bay,
13 the Delta, and its tributaries;

14 (ii) restoration of habitat in the Delta,
15 San Pablo Bay, and Suisun Bay and
16 Marsh, including tidal wetlands and ripar-
17 ian habitat;

18 (iii) fish screen and fish passage im-
19 provement projects;

20 (iv) implementation of an invasive
21 species program, including prevention, con-
22 trol, and eradication;

23 (v) development and integration of
24 State and Federal agricultural programs

1 that benefit wildlife into the Ecosystem
2 Restoration Program;

3 (vi) financial and technical support
4 for locally-based collaborative programs to
5 restore habitat while addressing the con-
6 cerns of local communities;

7 (vii) water quality improvement
8 projects to reduce salinity, selenium, mer-
9 cury, pesticides, trace metals, dissolved ox-
10 ygen, turbidity, sediment, and other pollut-
11 ants;

12 (viii) land and water acquisitions to
13 improve habitat and fish spawning and
14 survival in the Delta and its tributaries;

15 (ix) integrated flood management,
16 ecosystem restoration, and levee protection
17 projects;

18 (x) scientific evaluations and targeted
19 research on program activities; and

20 (xi) strategic planning and tracking of
21 program performance.

22 (H) WATERSHEDS.—Of the amounts au-
23 thorized to be appropriated for fiscal years
24 2004 through 2007 under this Act, no more

1 than \$50,000,000 may be expended for the fol-
2 lowing—

3 (i) building local capacity to assess
4 and manage watersheds affecting the Bay-
5 Delta system;

6 (ii) technical assistance for watershed
7 assessments and management plans; and

8 (iii) developing and implementing lo-
9 cally-based watershed conservation, main-
10 tenance, and restoration actions.

11 (I) WATER QUALITY.—Of the amounts au-
12 thorized to be appropriated for fiscal years
13 2004 through 2007 under this Act, no more
14 than \$50,000,000 may be expended for the fol-
15 lowing—

16 (i) addressing drainage problems in
17 the San Joaquin Valley to improve down-
18 stream water quality, including habitat res-
19 toration projects that reduce drainage and
20 improve water quality, provided that—

21 (I) a plan is in place for moni-
22 toring downstream water quality im-
23 provements;

1 (II) state and local agencies are
2 consulted on the activities to be fund-
3 ed; and

4 (III) this clause is not intended
5 to create any right, benefit or privi-
6 lege;

7 (ii) implementation of source control
8 programs in the Delta and its tributaries;

9 (iii) developing recommendations
10 through scientific panels and advisory
11 council processes to meet the Califed Bay-
12 Delta Program goal of continuous improve-
13 ment in Delta water quality for all uses;

14 (iv) investing in treatment technology
15 demonstration projects;

16 (v) controlling runoff into the Cali-
17 fornia aqueduct and other similar convey-
18 ances;

19 (vi) addressing water quality problems
20 at the North Bay Aqueduct;

21 (vii) studying recirculation of export
22 water to reduce salinity and improve dis-
23 solved oxygen in the San Joaquin River;

24 (viii) supporting and participating in
25 the development of projects to enable San

1 Francisco Bay Area water districts to work
2 cooperatively to address their water quality
3 and supply reliability issues, including con-
4 nections between aqueducts, water trans-
5 fers, water conservation measures, institu-
6 tional arrangements, and infrastructure
7 improvements that encourage regional ap-
8 proaches, and investigations and studies of
9 available capacity in a project to deliver
10 water to the East Bay Municipal Utility
11 District under its contract with the Bureau
12 of Reclamation dated July 20, 2001, in
13 order to determine if such capacity can be
14 utilized to meet the above objectives; *Pro-*
15 *vided,* That these investigations and stud-
16 ies shall be conducted consistent with the
17 Record of Decision;

18 (ix) development of water quality ex-
19 changes and other programs to make high
20 quality water available to urban areas; and

21 (x) development and implementation
22 of a plan to meet all existing water quality
23 standards for which the State and Federal
24 water projects have responsibility.

1 (J) LEVEE STABILITY.—Of the amounts
2 authorized to be appropriated for fiscal years
3 2004 through 2007 under this Act, no more
4 than \$70,000,000 may be expended for the fol-
5 lowing—

6 (i) assisting local reclamation districts
7 in reconstructing Delta levees to a base
8 level of protection (not to exceed
9 \$20,000,000);

10 (ii) enhancing the stability of levees
11 that have particular importance in the sys-
12 tem through the Delta Levee Special Im-
13 provement Projects program (not to exceed
14 \$20,000,000);

15 (iii) developing best management
16 practices to control and reverse land sub-
17 sidence on Delta islands (not to exceed
18 \$1,000,000);

19 (iv) refining the Delta Emergency
20 Management Plan (not to exceed
21 \$1,000,000);

22 (v) developing a Delta Risk Manage-
23 ment Strategy after assessing the con-
24 sequences of Delta levee failure from

1 floods, seepage, subsidence, and earth-
2 quakes (not to exceed \$500,000);

3 (vi) developing a strategy for reuse of
4 dredged materials on Delta islands (not to
5 exceed \$1,500,000);

6 (vii) evaluating, and where appro-
7 priate, rehabilitating the Suisun Marsh lev-
8 ees (not to exceed \$6,000,000); and

9 (viii) integrated flood management,
10 ecosystem restoration, and levee protection
11 projects, including design and construction
12 of lower San Joaquin River and lower
13 Mokelumne River floodway improvements
14 and other projects under the Sacramento-
15 San Joaquin Comprehensive Study (not to
16 exceed \$20,000,000);

17 (K) SCIENCE.—Of the amounts authorized
18 to be appropriated for fiscal years 2004
19 through 2007 under this Act, no more than
20 \$50,000,000 may be expended for the fol-
21 lowing—

22 (i) establishing and maintaining an
23 independent science board, technical pan-
24 els, and standing boards to provide over-
25 sight and peer review of the program;

1 (ii) conducting expert evaluations and
 2 scientific assessments of all program ele-
 3 ments;

4 (iii) coordinating existing monitoring
 5 and scientific research programs;

6 (iv) developing and implementing
 7 adaptive management experiments to test,
 8 refine and improve scientific under-
 9 standings;

10 (v) establishing performance meas-
 11 ures, and monitoring and evaluating the
 12 performance of all program elements; and

13 (vi) preparing an annual Science Re-
 14 port.

15 (L) PROGRAM MANAGEMENT, OVERSIGHT,
 16 AND COORDINATION.—Of the amounts author-
 17 ized to be appropriated for fiscal years 2004
 18 through 2007 under this Act, no more than
 19 \$25,000,000 may be expended by the Secretary,
 20 acting through the Director of the Calfed Bay-
 21 Delta Program, for the following—

22 (i) program-wide tracking of sched-
 23 ules, finances, and performance;

(ii) multi-agency oversight and coordination of Calfed activities to ensure program balance and integration;

(iii) development of interagency cross-cut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;

(iv) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities under the Federal Advisory Committee Act; and

(v) development of Annual Reports.

(M) DIVERSIFICATION OF WATER SUPPLIES.—Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this Act, no more than \$30,000,000 may be expended to diversify sources of level 2 refuge supplies and modes of delivery to refuges, and to acquire additional water for level 4 refuge supplies.

(4) AUTHORIZED ACTIONS.—The Secretary and the Federal agency heads are authorized to carry out the activities authorized by this Act through the

1 use of grants, loans, contracts, and cooperative
 2 agreements with Federal and non-Federal entities
 3 where the Secretary or Federal agency head deter-
 4 mines that the grant, loan, contract, or cooperative
 5 agreement will assist in implementing the authorized
 6 activity in an efficient, timely, and cost-effective
 7 manner. Provided, however, that such activities shall
 8 not include construction unless the United States is
 9 a party to the contract for construction.

10 **SEC. 4. MANAGEMENT.**

11 (a) COORDINATION.—In carrying out the Calfed Bay-
 12 Delta Program, the Federal agencies shall coordinate their
 13 activities with the State agencies.

14 (b) PUBLIC PARTICIPATION.—In carrying out the
 15 Calfed Bay-Delta Program, the Federal agencies shall co-
 16 operate with local and tribal governments and the public
 17 through a federally chartered advisory committee or other
 18 appropriate means, to seek input on program elements
 19 such as planning, design, technical assistance, and devel-
 20 opment of peer review science programs.

21 (c) SCIENCE.—In carrying out the Calfed Bay-Delta
 22 Program, the Federal agencies shall seek to ensure, to the
 23 maximum extent practicable, that—

1 (1) all major aspects of implementing the Pro-
2 gram are subjected to credible and objective sci-
3 entific review; and

4 (2) major decisions are based upon the best
5 available scientific information.

6 (d) GOVERNANCE.—In carrying out the Califed Bay-
7 Delta Program, the Secretary and the Federal agency
8 heads are authorized to become voting members of the
9 California Bay-Delta Authority, as established in the Cali-
10 formia Bay-Delta Authority Act (2002 Cal. Stat. Chap.
11 812), to the extent consistent with Federal law. Nothing
12 in this subsection shall preempt or otherwise affect any
13 Federal law or limit the statutory authority of any Federal
14 agency: *Provided*, That the California Bay-Delta Authority
15 shall not be deemed to be an advisory committee within
16 the meaning of the Federal Advisory Committee Act (5
17 U.S.C. App. 1) and the financial interests of the California
18 Bay-Delta Authority shall not be imputed to any Federal
19 official participating in such Authority.

20 (e) ENVIRONMENTAL JUSTICE.—Consistent with Ex-
21 ecutive Order 12898 pertaining to Federal Actions to Ad-
22 dress Environmental Justice in Minority and Low-Income
23 Populations, it is the intent of the Congress that the Fed-
24 eral and State agencies should continue to collaborate to
25 develop a comprehensive environmental justice workplan

1 for the Calfed Bay-Delta Program and fulfill the commit-
 2 ment to addressing environmental justice challenges re-
 3 ferred to in the Calfed Bay-Delta Program Environmental
 4 Justice Workplan dated December 13, 2000.

5 (f) LAND ACQUISITION.—Before obligating or ex-
 6 pending any Federal funds to acquire land for the Eco-
 7 system Restoration Program, the Secretary shall first de-
 8 termine that existing Federal land, State land, or other
 9 public land is not available for the project purpose. Private
 10 land acquisitions shall prioritize easements over acqui-
 11 sitions of fee title unless easements are unavailable or un-
 12 suitable for the stated purpose.

13 (g) STATUS REPORTS.—The Secretary shall report
 14 monthly on the Authority's progress in achieving the water
 15 supply targets as described in Section 2.2.4 of the Record
 16 of Decision, the environmental water account require-
 17 ments as described in Section 2.2.7, and the water quality
 18 targets as described in Section 2.2.9, and any pending ac-
 19 tions that may affect the Authority's ability to achieve
 20 those targets and requirements.

21 **SEC. 5. REPORTING REQUIREMENTS.**

22 (a) REPORT AND CERTIFICATION BY CALFED.—The
 23 Secretary, in cooperation with the Governor, shall submit
 24 a report of the California Bay-Delta Authority by Decem-
 25 ber 15 of each year to the appropriate authorizing and

1 appropriating Committees of the Senate and the House
2 of Representatives that describes the status of implemen-
3 tation of all components of the Calfed Bay-Delta Program
4 and that certifies whether or not the Calfed Bay-Delta
5 Program is progressing in a balanced manner which allows
6 all program components to be advanced, including addi-
7 tional water supply, ecosystem restoration, and water
8 quality. The Secretary's report shall describe—

9 (1) the progress of the Calfed Bay-Delta Pro-
10 gram in meeting the implementation schedule for the
11 Program in a manner consistent with the Record of
12 Decision;

13 (2) the status of implementation of all compo-
14 nents of the Calfed Bay-Delta Program;

15 (3) expenditures in the past fiscal year and year
16 to date for implementing the Calfed Bay-Delta Pro-
17 gram; and

18 (4) accomplishments in the past fiscal year and
19 year to date in achieving the objectives of additional
20 and improved—

21 (A) water storage;

22 (B) water quality;

23 (C) water use efficiency;

24 (D) ecosystem restoration;

25 (E) watershed management;

- 1 (F) levee system integrity;
- 2 (G) water transfers;
- 3 (H) water conveyance; and
- 4 (I) water supply reliability.

5 The report shall discuss the status of Calfed Bay-Delta
6 Program goals, current schedules, and relevant financing
7 agreements.

8 (b) STATEMENT OF BALANCE.—Substantial progress
9 in each of the categories listed in subsection (a) shall be
10 considered in determining whether the Calfed Bay-Delta
11 Program is proceeding in a balanced manner for purposes
12 of making the certification provided for in subsection (a).
13 In addition, in making such certification the Secretary, in
14 cooperation with the Governor, shall prepare a statement
15 of whether the program is in balance which takes into con-
16 sideration the following—

- 17 (1) status of all Stage 1 actions, including
- 18 goals, schedules, and financing agreements;
- 19 (2) progress on storage projects, conveyance im-
- 20 provements, levee improvements, water quality
- 21 projects, and water use efficiency programs;
- 22 (3) completion of key projects and milestones
- 23 identified in the Ecosystem Restoration Program;

1 (4) development and implementation of local
2 programs for watershed conservation and restora-
3 tion;

4 (5) progress in improving water supply reli-
5 ability and implementing the Environmental Water
6 Account;

7 (6) achievement of commitments under State
8 and Federal Endangered Species Acts;

9 (7) implementation of a comprehensive science
10 program;

11 (8) progress toward acquisition of the State and
12 Federal permits, including Clean Water Act section
13 404(a) permits, for implementation of projects in all
14 identified program areas;

15 (9) progress in achieving benefits in all geo-
16 graphic regions covered by the Program;

17 (10) legislative action on water transfer,
18 groundwater management, water use efficiency, and
19 governance issues;

20 (11) status of complementary actions;

21 (12) status of mitigation measures; and

22 (13) revisions to funding commitments and pro-
23 gram responsibilities.

24 (c) REVISED SCHEDULE.—If the report provided for
25 in subsection (a) and the statement of balance provided

1 for in subsection (b) conclude that the Calfed Bay-Delta
 2 Program is not progressing in a balanced manner so that
 3 no certification of balanced implementation can be made;
 4 the California Bay-Delta Authority shall prepare a revised
 5 schedule to ensure the Calfed Bay-Delta Program will
 6 progress in a balanced manner consistent with the intent
 7 of the Record of Decision. This revised schedule shall be
 8 subject to approval by the Secretary and the Governor,
 9 and upon such approval, shall be submitted to the appro-
 10 priate authorizing and appropriating committees of the
 11 Senate and the House of Representatives.

12 (d) FEASIBILITY STUDIES.—Any feasibility studies
 13 completed for storage projects as a result of this Act shall
 14 include identification of project benefits and beneficiaries
 15 and a cost allocation plan consistent with the beneficiaries
 16 pay provisions of the Record of Decision.

17 (e) FINANCIAL SUMMARY.—In addition to the report
 18 required pursuant to subsection (a), no later than Feb-
 19 ruary 15 of each year the Secretary shall submit to the
 20 appropriate authorizing and appropriating committees of
 21 the Senate and the House of Representatives a financial
 22 report certified by the Secretary containing a detailed ac-
 23 counting of all funds received and obligated by all Federal
 24 and State agencies responsible for implementing the
 25 Calfed Bay-Delta Program in the previous fiscal year, a

1 budget for the proposed projects (including a description
 2 of the project, authorization level, and project status) to
 3 be carried out in the upcoming fiscal year with the Federal
 4 portion of funds authorized under this Act, and a listing
 5 of all projects to be undertaken in the upcoming fiscal year
 6 with the Federal portion of funds authorized under this
 7 Act.

8 (f) REPORT.—Prior to December 2004, the Sec-
 9 retary, after consultation with the Governor and the Fed-
 10 eral agency heads, shall submit a report to Congress
 11 that—

12 (1) details the accomplishments of the Califed
 13 Bay-Delta Program to date;

14 (2) identifies the specific steps that remain to
 15 be undertaken in the Program;

16 (3) sets forth the specific funding levels and
 17 sources to accomplish such steps; and

18 (4) makes such recommendations as may be
 19 necessary to accomplish the goals and objectives of
 20 the continuing Califed Bay-Delta Program.

21 **SEC. 6. CROSSCUT BUDGET AND AUTHORIZATION OF AP-**
 22 **PROPRIATIONS.**

23 (a) CROSSCUT BUDGET.—The President's Budget
 24 shall include requests for the appropriate level of funding
 25 for each of the Federal agencies to carry out its respon-

1 sibilities under the Calfed Bay-Delta Program. Such funds
 2 shall be requested for the Federal agency with authority
 3 and programmatic responsibility for the obligation of such
 4 funds, as set forth in section 3(c)(2). At the time of sub-
 5 mission of the President's Budget to the Congress, the Di-
 6 rector of the Office of Management and Budget shall sub-
 7 mit to the appropriate authorizing and appropriating com-
 8 mittees of the Senate and the House of Representatives
 9 and interagency budget crosscut report that displays the
 10 budget proposed, including any interagency or intra-agen-
 11 cy transfer, for each of the Federal agencies to carry out
 12 the Calfed Bay-Delta Program for the upcoming fiscal
 13 year, separately showing funding requested under both
 14 pre-existing authorities and under the new authorities
 15 granted by this Act. The report shall also identify all ex-
 16 penditures since 1996 within the Federal and State gov-
 17 ernments used to achieve the objectives of the Calfed Bay-
 18 Delta Program.

19 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 20 are authorized to be appropriated to the Secretary and
 21 the heads of the Federal agencies \$880,000,000 to pay
 22 the Federal share of carrying out Stage 1 of the Record
 23 of Decision for fiscal years 2004 through 2007, in accord-
 24 ance with the provisions of this Act. The funds shall re-
 25 main available without fiscal year limitation.

1 **SEC. 7. FEDERAL SHARE OF COSTS.**

2 The Federal share of the cost of implementing Stage
3 1 of the Calfed Bay-Delta Program as set forth in the
4 Record of Decision shall not exceed 33.3 percent.

5 **SEC. 8. COMPLIANCE WITH STATE AND FEDERAL LAW.**

6 Nothing in this Act preempts or otherwise affects any
7 Federal or State law, including any authority of a Federal
8 agency to carry out activities related to, or in furtherance
9 of, the Calfed Bay-Delta Program.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Calfed Bay-Delta Au-*
12 *thorization Act”.*

13 **SEC. 2. DEFINITIONS.**

14 *In this Act:*

15 (1) *CALFED BAY-DELTA PROGRAM.*—*The terms*
16 *“Calfed Bay-Delta Program” and “Program” mean*
17 *the programs, projects, complementary actions, and*
18 *activities undertaken through coordinated planning,*
19 *implementation, and assessment activities of the State*
20 *agencies and Federal agencies as set forth in the*
21 *Record of Decision and the California Bay-Delta Au-*
22 *thority Act (Cal. Water Code § 79400 et seq.).*

23 (2) *CALIFORNIA BAY-DELTA AUTHORITY.*—*The*
24 *terms “California Bay-Delta Authority” and “Au-*
25 *thority” mean the California Bay-Delta Authority, as*

1 *set forth in the California Bay-Delta Authority Act*
 2 *(Cal. Water Code § 79400 et seq.).*

3 (3) *ENVIRONMENTAL WATER ACCOUNT.*—*The*
 4 *term “Environmental Water Account” means the Co-*
 5 *operative Management Program established under the*
 6 *Record of Decision to provide water, in addition to*
 7 *the quantity of the regulatory baseline, to protect and*
 8 *restore Delta fisheries.*

9 (4) *FEDERAL AGENCIES.*—*The term “Federal*
 10 *agencies” means—*

11 (A) *the Department of the Interior, includ-*
 12 *ing—*

13 (i) *the Bureau of Reclamation;*

14 (ii) *the United States Fish and Wild-*
 15 *life Service;*

16 (iii) *the Bureau of Land Management;*
 17 *and*

18 (iv) *the United States Geological Sur-*
 19 *vey;*

20 (B) *the Environmental Protection Agency;*

21 (C) *the Army Corps of Engineers;*

22 (D) *the Department of Commerce, including*
 23 *the National Marine Fisheries Service (also*
 24 *known as “NOAA Fisheries”);*

1 (E) the Department of Agriculture, includ-
2 ing—

3 (i) the Natural Resources Conservation
4 Service; and

5 (ii) the Forest Service; and

6 (F) the Western Area Power Administra-
7 tion.

8 (5) GOVERNOR.—The term “Governor” means
9 the Governor of the State of California.

10 (6) RECORD OF DECISION.—The term “Record of
11 Decision” means the Calfed Bay-Delta Program
12 Record of Decision, dated August 28, 2000.

13 (7) SECRETARY.—The term “Secretary” means
14 the Secretary of the Interior.

15 (8) STATE.—The term “State” means the State
16 of California.

17 (9) STATE AGENCIES.—The term “State agen-
18 cies” means—

19 (A) the Resources Agency of California, in-
20 cluding—

21 (i) the Department of Water Resources;

22 (ii) the Department of Fish and Game;

23 (iii) the Reclamation Board;

24 (iv) the Delta Protection Commission;

25 (v) the Department of Conservation;

1 (vi) the San Francisco Bay Conserva-
2 tion and Development Commission;

3 (vii) the Department of Parks and
4 Recreation; and

5 (viii) the California Bay-Delta Author-
6 ity;

7 (B) the California Environmental Protec-
8 tion Agency, including the State Water Re-
9 sources Control Board;

10 (C) the California Department of Food and
11 Agriculture; and

12 (D) the Department of Health Services.

13 **SEC. 3. BAY DELTA PROGRAM.**

14 (a) *IN GENERAL.*—

15 (1) *RECORD OF DECISION AS FRAMEWORK.*—*The*
16 *Record of Decision is approved as a framework for*
17 *addressing the Calfed Bay-Delta Program, including*
18 *its components relating to water storage, ecosystem*
19 *restoration, water supply reliability, conveyance,*
20 *water use efficiency, water quality, water transfers,*
21 *watersheds, the Environmental Water Account, levee*
22 *stability, governance, and science.*

23 (2) *REQUIREMENTS.*—*The Secretary and the*
24 *heads of the Federal agencies are authorized to carry*

1 *out the activities described in subsection (b) subject*
 2 *to—*

3 *(A) the constraints of the Record of Deci-*
 4 *sion; and*

5 *(B) the requirements that Program activi-*
 6 *ties consisting of protecting drinking water qual-*
 7 *ity, restoring ecological health, improving water*
 8 *supply reliability (including additional storage*
 9 *and conveyance), and protecting Delta levees will*
 10 *progress in a balanced manner.*

11 *(b) AUTHORIZED ACTIVITIES.—*

12 *(1) IN GENERAL.—The Secretary and the heads*
 13 *of the Federal agencies are authorized to carry out the*
 14 *activities described in paragraphs (2) through (5) in*
 15 *furtherance of the Calfed Bay-Delta Program as set*
 16 *forth in the Record of Decision, subject to the cost-*
 17 *share and other provisions of this Act, if the activity*
 18 *has been—*

19 *(A) subject to environmental review and ap-*
 20 *proval, as required under applicable Federal and*
 21 *State law; and*

22 *(B) approved and certified by the relevant*
 23 *Federal agency, following consultation and co-*
 24 *ordination with the California Bay-Delta Au-*

1 *thority, to be consistent with the Record of Deci-*
 2 *sion.*

3 (2) *AUTHORIZATIONS FOR FEDERAL AGENCIES*
 4 *UNDER APPLICABLE LAW.—*

5 (A) *SECRETARY OF THE INTERIOR.—The*
 6 *Secretary of the Interior is authorized to carry*
 7 *out the activities described in subparagraphs (A)*
 8 *through (J) of paragraph (3), to the extent au-*
 9 *thorized under the reclamation laws, the Central*
 10 *Valley Project Improvement Act (title XXXIV of*
 11 *Public Law 102–575; 106 Stat. 4706), the Fish*
 12 *and Wildlife Coordination Act (16 U.S.C. 661 et*
 13 *seq.), the Endangered Species Act of 1973 (16*
 14 *U.S.C. 1531 et seq.), and other applicable law.*

15 (B) *ADMINISTRATOR OF THE ENVIRON-*
 16 *MENTAL PROTECTION AGENCY.—The Adminis-*
 17 *trator of the Environmental Protection Agency is*
 18 *authorized to carry out the activities described in*
 19 *subparagraphs (C), (E), (F), (G), (H), and (I)*
 20 *of paragraph (3), to the extent authorized under*
 21 *the Federal Water Pollution Control Act (33*
 22 *U.S.C. 1251 et seq.), the Safe Drinking Water*
 23 *Act (42 U.S.C. 300f et seq.), and other applicable*
 24 *law.*

1 (C) *SECRETARY OF THE ARMY.*—*The Sec-*
2 *retary of the Army is authorized to carry out the*
3 *activities described in subparagraphs (A), (B),*
4 *(F), (G), (H), and (I) of paragraph (3), to the*
5 *extent authorized under flood control, water re-*
6 *source development, and other applicable law.*

7 (D) *SECRETARY OF COMMERCE.*—*The Sec-*
8 *retary of Commerce is authorized to carry out*
9 *the activities described in subparagraphs (B),*
10 *(F), (G), and (I) of paragraph (3), to the extent*
11 *authorized under the Fish and Wildlife Coordi-*
12 *nation Act (16 U.S.C. 661 et seq.), the Endan-*
13 *gered Species Act of 1973 (16 U.S.C. 1531 et*
14 *seq.), and other applicable law.*

15 (E) *SECRETARY OF AGRICULTURE.*—*The*
16 *Secretary of Agriculture is authorized to carry*
17 *out the activities described in subparagraphs (C),*
18 *(E), (F), (G), (H), and (I) of paragraph (3), to*
19 *the extent authorized under title XII of the Food*
20 *Security Act of 1985 (16 U.S.C. 3801 et seq.),*
21 *the Farm Security and Rural Investment Act of*
22 *2002 (Public Law 107–171; 116 Stat. 134) (in-*
23 *cluding amendments made by that Act), and*
24 *other applicable law.*

(3) *DESCRIPTION OF ACTIVITIES UNDER APPLICABLE LAW.*—

(A) *WATER STORAGE.*—Activities under this subparagraph consist of—

(i) *planning and feasibility studies for projects to be pursued with project-specific study for enlargement of—*

(I) *the Shasta Dam in Shasta County; and*

(II) *the Los Vaqueros Reservoir in Contra Costa County;*

(ii) *planning and feasibility studies for the following projects requiring further consideration—*

(I) *the Sites Reservoir in Colusa County; and*

(II) *the Upper San Joaquin River storage in Fresno and Madera Counties;*

(iii) *developing and implementing groundwater management and groundwater storage projects; and*

(iv) *comprehensive water management planning.*

(B) *CONVEYANCE.*—

1 (i) *SOUTH DELTA ACTIONS.—In the*
2 *case of the South Delta, activities under this*
3 *clause consist of—*

4 (I) *the South Delta Improvements*
5 *Program through actions to—*

6 (aa) *increase the State Water*
7 *Project export limit to 8,500 cfs;*

8 (bb) *install permanent, oper-*
9 *able barriers in the south Delta;*

10 (cc) *design and construct fish*
11 *screens and intake facilities at the*
12 *Tracy Pumping Plant facilities;*
13 *and*

14 (dd) *increase the State Water*
15 *Project export to the maximum*
16 *capability of 10,300 cfs;*

17 (II) *reduction of agricultural*
18 *drainage in south Delta channels, and*
19 *other actions necessary to minimize the*
20 *impact of drainage on drinking water*
21 *quality;*

22 (III) *design and construction of*
23 *lower San Joaquin River floodway im-*
24 *provements;*

1 (IV) installation and operation of
 2 temporary barriers in the south Delta
 3 until fully operable barriers are con-
 4 structed;

5 (V) actions to protect navigation
 6 and local diversions not adequately
 7 protected by temporary barriers; and

8 (VI) actions identified in sub-
 9 clause (I) or other actions necessary to
 10 offset the degradation of drinking
 11 water quality or adverse impacts to
 12 fishery protection in the Delta due to
 13 the South Delta Improvements Pro-
 14 gram.

15 (ii) NORTH DELTA ACTIONS.—In the
 16 case of the North Delta, activities under this
 17 clause consist of—

18 (I) evaluation and implementa-
 19 tion of improved operational proce-
 20 dures for the Delta Cross Channel to
 21 address fishery and water quality con-
 22 cerns;

23 (II) evaluation of a screened
 24 through-Delta facility on the Sac-
 25 ramento River; and

1 (III) *design and construction of*
2 *lower Mokelumne River floodway im-*
3 *provements.*

4 (iii) *INTERTIES.—Activities under this*
5 *clause consist of—*

6 (I) *evaluation and construction of*
7 *an intertie between the State Water*
8 *Project California Aqueduct and the*
9 *Central Valley Project Delta Mendota*
10 *Canal, near the City of Tracy; and*

11 (II) *assessment of a connection of*
12 *the Central Valley Project to the Clif-*
13 *ton Court Forebay of the State Water*
14 *Project, with a corresponding increase*
15 *in the screened intake of the Forebay.*

16 (C) *WATER USE EFFICIENCY.—Activities*
17 *under this subparagraph consist of—*

18 (i) *water conservation projects that*
19 *provide water supply reliability, water*
20 *quality, and ecosystem benefits to the Bay-*
21 *Delta system;*

22 (ii) *technical assistance for urban and*
23 *agricultural water conservation projects;*

24 (iii) *water recycling and desalination*
25 *projects, including projects identified in the*

1 *Bay Area Water Plan and the Southern*
 2 *California Comprehensive Water Reclama-*
 3 *tion and Reuse Study and other projects,*
 4 *giving priority to projects that include re-*
 5 *gional solutions to benefit regional water*
 6 *supply and reliability needs;*

7 *(iv) water measurement and transfer*
 8 *actions; and*

9 *(v) certification of implementation of*
 10 *best management practices for urban water*
 11 *conservation.*

12 *(D) WATER TRANSFERS.—Activities under*
 13 *this subparagraph consist of—*

14 *(i) increasing the availability of exist-*
 15 *ing facilities for water transfers;*

16 *(ii) lowering transaction costs through*
 17 *permit streamlining; and*

18 *(iii) maintaining a water transfer in-*
 19 *formation clearinghouse.*

20 *(E) INTEGRATED REGIONAL WATER MAN-*
 21 *AGEMENT PLANS.—Activities under this subpara-*
 22 *graph consist of assisting local and regional*
 23 *communities in the State in developing and im-*
 24 *plementing integrated regional water manage-*
 25 *ment plans to carry out projects and programs*

1 *that improve water supply reliability, water*
 2 *quality, ecosystem restoration, and flood protec-*
 3 *tion, or meet other local and regional needs, in*
 4 *a manner that is consistent with, and makes a*
 5 *significant contribution to, the Calfed Bay-Delta*
 6 *Program.*

7 (F) *ECOSYSTEM RESTORATION.—Activities*
 8 *under this subparagraph consist of—*

9 (i) *implementation of large-scale res-*
 10 *toration projects in San Francisco Bay and*
 11 *the Delta and its tributaries;*

12 (ii) *restoration of habitat in the Delta,*
 13 *San Pablo Bay, and Suisun Bay and*
 14 *Marsh, including tidal wetland and ripar-*
 15 *ian habitat;*

16 (iii) *fish screen and fish passage im-*
 17 *provement projects;*

18 (iv) *implementation of an invasive*
 19 *species program, including prevention, con-*
 20 *trol, and eradication;*

21 (v) *development and integration of*
 22 *Federal and State agricultural programs*
 23 *that benefit wildlife into the Ecosystem Res-*
 24 *toration Program;*

1 (vi) *financial and technical support for*
 2 *locally-based collaborative programs to re-*
 3 *store habitat while addressing the concerns*
 4 *of local communities;*

5 (vii) *water quality improvement*
 6 *projects to reduce salinity, selenium, mer-*
 7 *cury, pesticides, trace metals, dissolved oxy-*
 8 *gen, turbidity, sediment, and other pollut-*
 9 *ants;*

10 (viii) *land and water acquisitions to*
 11 *improve habitat and fish spawning and*
 12 *survival in the Delta and its tributaries;*

13 (ix) *integrated flood management, eco-*
 14 *system restoration, and levee protection*
 15 *projects;*

16 (x) *scientific evaluations and targeted*
 17 *research on Program activities; and*

18 (xi) *strategic planning and tracking of*
 19 *Program performance.*

20 (G) *WATERSHEDS.—Activities under this*
 21 *subparagraph consist of—*

22 (i) *building local capacity to assess*
 23 *and manage watersheds affecting the Calfed*
 24 *Bay-Delta system;*

1 (ii) *technical assistance for watershed*
 2 *assessments and management plans; and*

3 (iii) *developing and implementing lo-*
 4 *cally-based watershed conservation, mainte-*
 5 *nance, and restoration actions.*

6 (H) *WATER QUALITY.—Activities under this*
 7 *subparagraph consist of—*

8 (i) *addressing drainage problems in*
 9 *the San Joaquin Valley to improve down-*
 10 *stream water quality (including habitat res-*
 11 *toration projects that reduce drainage and*
 12 *improve water quality) if—*

13 (I) *a plan is in place for moni-*
 14 *toring downstream water quality im-*
 15 *provements; and*

16 (II) *State and local agencies are*
 17 *consulted on the activities to be funded;*
 18 *except that no right, benefit, or privilege is*
 19 *created as a result of this clause;*

20 (ii) *implementation of source control*
 21 *programs in the Delta and its tributaries;*

22 (iii) *developing recommendations*
 23 *through scientific panels and advisory coun-*
 24 *cil processes to meet the Calfed Bay-Delta*

1 *Program goal of continuous improvement in*
 2 *Delta water quality for all uses;*

3 *(iv) investing in treatment technology*
 4 *demonstration projects;*

5 *(v) controlling runoff into the Cali-*
 6 *fornia aqueduct, the Delta-Mendota Canal,*
 7 *and other similar conveyances;*

8 *(vi) addressing water quality problems*
 9 *at the North Bay Aqueduct;*

10 *(vii) supporting and participating in*
 11 *the development of projects to enable San*
 12 *Francisco Bay Area water districts to work*
 13 *cooperatively to address their water quality*
 14 *and supply reliability issues, including—*

15 *(I) connections between aqueducts,*
 16 *water transfers, water conservation*
 17 *measures, institutional arrangements,*
 18 *and infrastructure improvements that*
 19 *encourage regional approaches; and*

20 *(II) investigations and studies of*
 21 *available capacity in a project to de-*
 22 *liver water to the East Bay Municipal*
 23 *Utility District under its contract with*
 24 *the Bureau of Reclamation, dated July*
 25 *20, 2001, in order to determine if such*

1 *capacity can be utilized to meet the ob-*
2 *jectives of this clause;*

3 *(viii) development of water quality ex-*
4 *changes and other programs to make high*
5 *quality water available for urban and other*
6 *users; and*

7 *(ix) development and implementation*
8 *of a plan to meet all water quality stand-*
9 *ards for which the Federal and State water*
10 *projects have responsibility.*

11 *(I) SCIENCE.—Activities under this sub-*
12 *paragraph consist of—*

13 *(i) establishing and maintaining an*
14 *independent science board, technical panels,*
15 *and standing boards to provide oversight*
16 *and peer review of the Program;*

17 *(ii) conducting expert evaluations and*
18 *scientific assessments of all Program ele-*
19 *ments;*

20 *(iii) coordinating existing monitoring*
21 *and scientific research programs;*

22 *(iv) developing and implementing*
23 *adaptive management experiments to test,*
24 *refine, and improve scientific under-*
25 *standings;*

(v) establishing performance measures,
and monitoring and evaluating the per-
formance of all Program elements; and

(vi) preparing an annual science re-
port.

(J) DIVERSIFICATION OF WATER SUP-
PLIES.—Activities under this subparagraph con-
sist of actions to—

(i) diversify sources of level 2 refuge
supplies and modes of delivery to refuges;
and

(ii) acquire additional water for level 4
refuge supplies.

(4) NEW AND EXPANDED AUTHORIZATIONS FOR
FEDERAL AGENCIES.—

(A) IN GENERAL.—The heads of the Federal
agencies described in this paragraph are author-
ized to carry out the activities described in para-
graph (5) during each of fiscal years 2005
through 2010, in coordination with the Bay-
Delta Authority.

(B) SECRETARY OF THE INTERIOR.—The
Secretary of the Interior is authorized to carry
out the activities described in subparagraphs
(A), (B), and (D) of paragraph (5).

1 (C) ADMINISTRATOR OF THE ENVIRON-
 2 MENTAL PROTECTION AGENCY AND THE SECRE-
 3 TARIES OF AGRICULTURE AND COMMERCE.—*The*
 4 Administrator of the Environmental Protection
 5 Agency, the Secretary of Agriculture, and the
 6 Secretary of Commerce are authorized to carry
 7 out the activities described in paragraph (5)(D).

8 (D) SECRETARY OF THE ARMY.—*The Sec-*
 9 retary of the Army is authorized to carry out the
 10 activities described in subparagraph (C) and (D)
 11 of paragraph (5).

12 (5) DESCRIPTION OF ACTIVITIES UNDER NEW
 13 AND EXPANDED AUTHORIZATIONS.—

14 (A) CONVEYANCE.—*Of the amounts author-*
 15 ized to be appropriated under section 8, not
 16 more than \$184,000,000 may be expended for—

17 (i) feasibility studies, evaluation, and
 18 implementation of the San Luis Reservoir
 19 lowpoint improvement project, except that
 20 Federal participation in any expansion of
 21 the Pacheco Reservoir shall be subject to fu-
 22 ture congressional authorization;

23 (ii) feasibility studies and actions at
 24 Franks Tract to improve water quality in
 25 the Delta;

1 (iii) feasibility studies and design of
 2 fish screen and intake facilities at Clifton
 3 Court Forebay and the Tracy Pumping
 4 Plant facilities; and

5 (iv) feasibility studies to investigate
 6 the recirculation of export water to reduce
 7 salinity and improve dissolved oxygen in
 8 the San Joaquin River.

9 (B) ENVIRONMENTAL WATER ACCOUNT.—Of
 10 the amounts authorized to be appropriated under
 11 section 8, not more than \$90,000,000 may be ex-
 12 pended for implementation of the Environmental
 13 Water Account.

14 (C) LEVEE STABILITY.—Of the amounts au-
 15 thorized to be appropriated under section 8, not
 16 more than \$90,000,000 may be expended for—

17 (i) reconstructing Delta levees to a base
 18 level of protection;

19 (ii) enhancing the stability of levees
 20 that have particular importance in the sys-
 21 tem through the Delta Levee Special Im-
 22 provement Projects program;

23 (iii) developing best management prac-
 24 tices to control and reverse land subsidence
 25 on Delta islands;

(iv) refining the Delta Emergency Plan;

(v) developing a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) developing a strategy for reuse of dredged materials on Delta islands;

(vii) evaluating, and where appropriate, rehabilitating the Suisun Marsh levees; and

(viii) integrated flood management, ecosystem restoration, and levee protection projects, including design and construction of lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study.

(D) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—

(i) IN GENERAL.—Of the amounts authorized to be appropriated under section 8, not more than \$25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or

1 *through grants, contracts, or cooperative*
 2 *agreements with agencies of the State, for—*

3 *(I) Program support;*

4 *(II) Program-wide tracking of*
 5 *schedules, finances, and performance;*

6 *(III) multiagency oversight and*
 7 *coordination of Program activities to*
 8 *ensure Program balance and integra-*
 9 *tion;*

10 *(IV) development of interagency*
 11 *cross-cut budgets and a comprehensive*
 12 *finance plan to allocate costs in ac-*
 13 *cordance with the beneficiary pays*
 14 *provisions of the Record of Decision;*

15 *(V) coordination of public out-*
 16 *reach and involvement, including trib-*
 17 *al, environmental justice, and public*
 18 *advisory activities in accordance with*
 19 *the Federal Advisory Committee Act (5*
 20 *U.S.C. App.); and*

21 *(VI) development of Annual Re-*
 22 *ports.*

23 *(ii) PROGRAM-WIDE ACTIVITIES.—Of*
 24 *the amount referred to in clause (i), not less*
 25 *than 50 percent of the appropriated amount*

1 *shall be provided to the California Bay-*
 2 *Delta Authority to carry out Program-wide*
 3 *management, oversight, and coordination*
 4 *activities.*

5 **SEC. 4. MANAGEMENT.**

6 (a) *COORDINATION.*—*In carrying out the Calfed Bay-*
 7 *Delta Program, the Federal agencies shall coordinate their*
 8 *activities with the State agencies.*

9 (b) *PUBLIC PARTICIPATION.*—*In carrying out the*
 10 *Calfed Bay-Delta Program, the Federal agencies shall co-*
 11 *operate with local and tribal governments and the public*
 12 *through an advisory committee established in accordance*
 13 *with the Federal Advisory Committee Act (5 U.S.C. App.)*
 14 *and other appropriate means, to seek input on Program*
 15 *planning and implementation.*

16 (c) *SCIENCE.*—*In carrying out the Calfed Bay-Delta*
 17 *Program, the Federal agencies shall seek to ensure, to the*
 18 *maximum extent practicable, that—*

19 (1) *all major aspects of implementing the Pro-*
 20 *gram are subjected to credible and objective scientific*
 21 *review; and*

22 (2) *major decisions are based upon the best*
 23 *available scientific information.*

24 (d) *GOVERNANCE.*—

1 (1) *IN GENERAL.*—*In carrying out the Califed*
 2 *Bay-Delta Program, the Secretary and the Federal*
 3 *agency heads are authorized to participate as non-*
 4 *voting members of the California Bay-Delta Author-*
 5 *ity, as established in the California Bay-Delta Au-*
 6 *thority Act (Cal. Water Code § 79400 et seq.), to the*
 7 *extent consistent with Federal law, for the full dura-*
 8 *tion of the period the Authority continues to be au-*
 9 *thorized by State law.*

10 (2) *RELATIONSHIP TO FEDERAL LAW AND AGEN-*
 11 *CIES.*—*Nothing in this subsection shall preempt or*
 12 *otherwise affect any Federal law or limit the statu-*
 13 *tory authority of any Federal agency.*

14 (3) *CALIFORNIA BAY-DELTA AUTHORITY.*—

15 (A) *ADVISORY COMMITTEE.*—*The California*
 16 *Bay-Delta Authority shall not be considered an*
 17 *advisory committee within the meaning of the*
 18 *Federal Advisory Committee Act (5 U.S.C.*
 19 *App.).*

20 (B) *FINANCIAL INTEREST.*—*The financial*
 21 *interests of the California Bay-Delta Authority*
 22 *shall not be imputed to any Federal official par-*
 23 *ticipating in the Authority.*

24 (C) *ETHICS REQUIREMENTS.*—*A Federal of-*
 25 *ficial participating in the California Bay-Delta*

1 *Authority shall remain subject to Federal finan-*
 2 *cial disclosure and conflict of interest laws and*
 3 *shall not be subject to State financial disclosure*
 4 *and conflict of interest laws.*

5 *(e) ENVIRONMENTAL JUSTICE.—The Federal agencies,*
 6 *consistent with Executive Order 12898 (59 Fed. Reg. 7629),*
 7 *should continue to collaborate with State agencies to—*

8 *(1) develop a comprehensive environmental jus-*
 9 *tice workplan for the Calfed Bay-Delta Program; and*

10 *(2) fulfill the commitment to addressing environ-*
 11 *mental justice challenges referred to in the Calfed*
 12 *Bay-Delta Program Environmental Justice*
 13 *Workplan, dated December 13, 2000.*

14 *(f) LAND ACQUISITION.—Federal funds appropriated*
 15 *by Congress specifically for implementation of the Calfed*
 16 *Bay-Delta Program may be used to acquire fee title to land*
 17 *only where consistent with the Record of Decision.*

18 **SEC. 5. REPORTING REQUIREMENTS.**

19 *(a) REPORT.—*

20 *(1) IN GENERAL.—Not later than February 15 of*
 21 *each year, the Secretary, in cooperation with the Gov-*
 22 *ernor and the California Bay-Delta Authority, shall*
 23 *submit to the appropriate authorizing and appro-*
 24 *priating Committees of the Senate and the House of*
 25 *Representatives a report that—*

1 (A) describes the status of implementation
2 of all components of the Calfed Bay-Delta Pro-
3 gram;

4 (B) sets forth any written determination re-
5 sulting from the review required under sub-
6 section (b); and

7 (C) includes any revised schedule prepared
8 under subsection (b).

9 (2) CONTENTS.—The report required under
10 paragraph (1) shall describe—

11 (A) the progress of the Calfed Bay-Delta
12 Program in meeting the implementation schedule
13 for the Program in a manner consistent with the
14 Record of Decision;

15 (B) the status of implementation of all com-
16 ponents of the Program;

17 (C) expenditures in the past fiscal year for
18 implementing the Program;

19 (D) accomplishments during the past fiscal
20 year in achieving the objectives of additional and
21 improved—

22 (i) water storage;

23 (ii) water quality;

24 (iii) water use efficiency;

25 (iv) ecosystem restoration;

1 (v) watershed management;

2 (vi) levee system integrity;

3 (vii) water transfers;

4 (viii) water conveyance; and

5 (ix) water supply reliability;

6 (E) Program goals, current schedules, and
7 relevant financing agreements;

8 (F) progress on—

9 (i) storage projects;

10 (ii) conveyance improvements;

11 (iii) levee improvements;

12 (iv) water quality projects; and

13 (v) water use efficiency programs;

14 (G) completion of key projects and mile-
15 stones identified in the Ecosystem Restoration
16 Program;

17 (H) development and implementation of
18 local programs for watershed conservation and
19 restoration;

20 (I) progress in improving water supply reli-
21 ability and implementing the Environmental
22 Water Account;

23 (J) achievement of commitments under the
24 Endangered Species Act of 1973 (16 U.S.C. 1531
25 et seq.) and endangered species law of the State;

1 (K) *implementation of a comprehensive*
 2 *science program;*

3 (L) *progress toward acquisition of the Fed-*
 4 *eral and State permits (including permits under*
 5 *section 404(a) of the Federal Water Pollution*
 6 *Control Act (33 U.S.C. 1344(a))) for implemen-*
 7 *tation of projects in all identified Program*
 8 *areas;*

9 (M) *progress in achieving benefits in all ge-*
 10 *ographic regions covered by the Program;*

11 (N) *legislative action on the issues of—*

12 (i) *water transfers;*

13 (ii) *groundwater management;*

14 (iii) *water use efficiency; and*

15 (iv) *governance;*

16 (O) *the status of complementary actions;*

17 (P) *the status of mitigation measures; and*

18 (Q) *revisions to funding commitments and*

19 *Program responsibilities.*

20 (b) *ANNUAL REVIEW OF PROGRESS AND BALANCE.—*

21 (1) *IN GENERAL.—Not later than November 15 of*
 22 *each year, the Secretary, in cooperation with the Gov-*
 23 *ernor and the Calfed Bay-Delta Authority, shall re-*
 24 *view progress in implementing the Calfed Bay-Delta*
 25 *Program based on—*

1 (A) consistency with the Record of Decision;
2 and

3 (B) balance in achieving the goals and ob-
4 jectives of the Calfed Bay-Delta Program.

5 (2) *REVISED SCHEDULE.*—If, at the conclusion
6 of each such annual review or if a timely annual re-
7 view is not undertaken, the Secretary, the Governor,
8 or the Calfed Bay-Delta Authority determines in
9 writing that either the Program implementation
10 schedule has not been substantially adhered to, or that
11 balanced progress in achieving the goals and objec-
12 tives of the Program is not occurring, the Secretary,
13 the Governor, and the Calfed Bay-Delta Authority, in
14 coordination with the Bay-Delta Public Advisory
15 Committee, shall prepare a revised schedule to achieve
16 balanced progress in all Calfed Bay-Delta Program
17 elements consistent with the intent of the Record of
18 Decision.

19 (c) *FEASIBILITY STUDIES.*—Any feasibility studies
20 completed as a result of this Act shall include identification
21 of project benefits and a cost allocation plan consistent with
22 the beneficiaries pay provisions of the Record of Decision.

23 **SEC. 6. CROSSCUT BUDGET.**

24 (a) *IN GENERAL.*—The budget of the President shall
25 include requests for the appropriate level of funding for each

1 *of the Federal agencies to carry out the responsibilities of*
 2 *the Federal agency under the Calfed Bay-Delta Program.*

3 (b) *REQUESTS BY FEDERAL AGENCIES.—The funds*
 4 *shall be requested for the Federal agency with authority and*
 5 *programmatic responsibility for the obligation of the funds,*
 6 *in accordance with paragraphs (2) through (5) of section*
 7 *3(b).*

8 (c) *REPORT.—At the time of submission of the budget*
 9 *of the President to Congress, the Director of the Office of*
 10 *Management and Budget, in coordination with the Author-*
 11 *ity, shall submit to the appropriate authorizing and appro-*
 12 *priating committees of the Senate and the House of Rep-*
 13 *resentatives a financial report certified by the Secretary*
 14 *containing—*

15 (1) *an interagency budget crosscut report that—*

16 (A) *displays the budget proposed, including*
 17 *any interagency or intraagency transfer, for each*
 18 *of the Federal agencies to carry out the Calfed*
 19 *Bay-Delta Program for the upcoming fiscal year,*
 20 *separately showing funding requested under both*
 21 *pre-existing authorities and under the new au-*
 22 *thorities granted by this Act; and*

23 (B) *identifies all expenditures since 2000 by*
 24 *the Federal and State governments to achieve the*
 25 *objectives of the Calfed Bay-Delta Program;*

1 (2) *a detailed accounting of all funds received*
 2 *and obligated by all Federal agencies and State agen-*
 3 *cies responsible for implementing the Calfed Bay-*
 4 *Delta Program during the previous fiscal year;*

5 (3) *a budget for the proposed projects (including*
 6 *a description of the project, authorization level, and*
 7 *project status) to be carried out in the upcoming fis-*
 8 *cal year with the Federal portion of funds for activi-*
 9 *ties under section 3(b); and*

10 (4) *a listing of all projects to be undertaken in*
 11 *the upcoming fiscal year with the Federal portion of*
 12 *funds for activities under section 3(b).*

13 **SEC. 7. FEDERAL SHARE OF COSTS.**

14 *The Federal share of the cost of implementing the*
 15 *Calfed Bay-Delta Program for fiscal years 2005 through*
 16 *2010 in the aggregate, as set forth in the Record of Decision,*
 17 *shall not exceed 33.3 percent.*

18 **SEC. 8. AUTHORIZATION OF APPROPRIATION.**

19 *There are authorized to be appropriated to the Sec-*
 20 *retary and the heads of the Federal agencies to pay the Fed-*
 21 *eral share of the cost of carrying out the new and expanded*
 22 *authorities described in paragraphs (4) and (5) of section*
 23 *3(b) \$389,000,000 for the period of fiscal years 2005*
 24 *through 2010, to remain available until expended.*

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108TH CONGRESS
2^D Session

S. 1097

[Report No. 108-268]

A BILL

To authorize the Secretary of the Interior to
implement the Calfed Bay-Delta Program.

MAY 20, 2004

Reported with an amendment